

BILL NO. G-75-06-27 (As Amended)

GENERAL ORDINANCE NO. G- 21-75

AN ORDINANCE Authorizing The Establishment Of A Trust
For The Purpose Of Administering Monies To Be
Received From The Lease Of The City Of Fort Wayne
Light And Power Utility To The Indiana & Michigan
Electric Company And Providing For The Use
Of Such Monies

WHEREAS, nearly every city in the country receives substantially
all of its financial support from taxes and other sources that are made available
on an annual basis; and

WHEREAS, it is impossible for the cities to estimate accurately the
amount of money which will become available at any time beyond the immediate
future; and

WHEREAS, the exigencies of budgeting are such that many cities
are required to devote a larger proportion of their revenues to current operating
expenses than is desirable; and

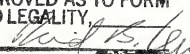
WHEREAS, a result of the aforesaid condition is that it is difficult
for cities to engage in realistic long term planning to assure fulfillment of their
needs for capital improvements; and

WHEREAS, the City of Fort Wayne finds itself in a unique position
among cities in that it is assured it will have available every year for 35 years
large sums of money from the lease of the City of Fort Wayne Light and Power
Utility to Indiana & Michigan Electric Company; and

WHEREAS, the revenues from said lease will represent the revenues
from said Light and Power Utility during the duration of the lease; and

WHEREAS, the occasion may arise, upon default in its obligations
under said lease by Indiana & Michigan Electric Company, or upon termination
of the lease, that the City of Fort Wayne may desire to reclaim said Light and
Power Utility, in which case it would be necessary for the City to reimburse
Indiana & Michigan Electric Company for extensions and additions to said Utility,
as provided in said Lease; and

APPROVED AS TO FORM
AND LEGALITY.


CITY ATTORNEY

WHEREAS, such reimbursements could be beyond the means of the City at the time they were required to be made, which would render it impossible for the City to reclaim said Utility; and

WHEREAS, it is desirable that the City of Fort Wayne establish a trust account, which is in effect a depreciation account, in the amount of \$270,000.00 annually which will enable the City to reclaim said Light and Power Utility by reimbursing Indiana & Michigan for additions and extensions upon default of its obligations under said lease by Indiana & Michigan Electric Company or upon termination of said lease; and

WHEREAS, in the event said Lease should run for its entire 35-year term, said trust account properly invested would produce a sum of approximately \$30,000,000 which, if left untouched in investments yielding a six (6) per cent return, would provide the City of Fort Wayne with an annual income of \$1,800,000 (equal to more than the final annual income from said Lease) in perpetuity; and

WHEREAS, it will be necessary to pay the general and administrative costs of said Lease, including the cost of pensions of retired employees of said Utility, which general and administrative costs will represent the operating expenses of said Utility; and

WHEREAS, there will be surplus funds left over; and

WHEREAS, it will be beneficial to the City that said surplus funds be used for capital improvements, which otherwise could be financed only by increasing the tax burden upon the citizens of the City; and

WHEREAS, the Board of Public Works presently administers the City's Cumulative Capital Improvement Fund; and

WHEREAS, such annual lease surplus in the Fort Wayne Light and Power Utility lease revenue account should be transferred to said Cumulative Capital Improvement Fund for purposes which will promote the cultural, recreational, public, civic or economic well being of the community in accordance with duly enacted ordinances passed by the Common Council of the City of Fort

Wayne and approved by the Mayor of the City of Fort Wayne; and

WHEREAS, The Common Council of the City of Fort Wayne has examined and hereby approves the terms of a certain trust agreement, (a copy of which is attached hereto and identified as Exhibit "A") having as its trustee a board of trustees, consisting of the President of the Common Council, the Chairman of the Finance Committee of said Council, the Chairman of the Public Utility Committee of said Council, the Chairman of the Board of Works Committee of said Council, the members of the Board of Public Works of the City, the City Controller, and the Mayor. The Mayor shall be Chairman of the Board of Trustees.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the proper officers of the City of Fort Wayne are hereby authorized and directed to execute the aforesaid trust agreement, and to carry out the terms and provisions thereof.

SECTION 2. That an amount equal to the annual revenue derived from the lease of the Fort Wayne Light and Power Utility to the Indiana and Michigan Electric Company after payment of general and administrative expenses of said Fort Wayne Light and Power Utility, including pension obligations, the cost of lease supervision and general operating expenses, and after payment of \$270,000 annually to the aforesaid trust account shall be transferred regularly to the City of Fort Wayne Cumulative Capital Improvement Fund to be used for capital purposes of a nature previously enumerated in the body of this Ordinance.

SECTION 3. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.


Councilman

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197____, at _____ o'clock P.M., E.S.T.

Date: _____ CITY CLERK

Read the third time in full and on motion by J. Schmidt, seconded by Zing, and duly adopted, placed on its passage. Passed ~~(and)~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
TOTAL VOTES	<u>7</u>	<u>2</u>			
BURNS	<u>✓</u>				
HINGA	<u>✓</u>				
KRAUS	<u>✓</u>				
MOSES		<u>✓</u>			
NUCKOLS	<u>✓</u>				
SCHMIDT, D.		<u>✓</u>			
SCHMIDT, V.	<u>✓</u>				
STIER	<u>✓</u>				
TALARICO	<u>✓</u>				

DATE: 7-22-75 Charles Hesterman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution No. B-21-75 on the 22nd day of July, 1975.

ATTEST: (SEAL) James Stier
Charles Hesterman CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd day of July, 1975, at the hour of 10:00 o'clock A. M., E.S.T.

Charles Hesterman
CITY CLERK

Approved and signed by me this 23rd day of July, 1975, at the hour of 11:00 o'clock A. M., E.S.T.

James Stier
MAYOR

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197____, at _____ o'clock P.M., E.S.T.

Date: _____ CITY CLERK

Read the third time in full and on motion by _____, seconded by _____, and duly adopted, placed on its passage.
Passed (LOST) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
TOTAL VOTES	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BURNS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINGA	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KRAUS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MOSES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NUCKOLS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SCHMIDT, D.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHMIDT, V.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
STIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TALARICO	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

DATE: (4) (5) (3) (6) CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. _____ on the _____ day of _____, 197____.

ATTEST: (SEAL)

CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 197____, at the hour of _____ o'clock _____ M., E.S.T.

CITY CLERK

Approved and signed by me this _____ day of _____, 197____, at the hour of _____ o'clock _____ M., E.S.T.

MAYOR

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197____, at _____ o'clock P.M., E.S.T.

Date: _____ CITY CLERK

Read the third time in full and on motion by _____, seconded by _____, and duly adopted, placed on its passage. Passed (LOST) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
TOTAL VOTES	1			2	N
BURNS	X			X	X
HINGA	N				X
KRAUS	N				N
MOSES	X			X	
NUCKOLS	N				N
SCHMIDT, D.	X			X	
SCHMIDT, V.	N				N
STIER	N				N
TALARICO	N				N

DATE: 6-N-3-Y CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. _____ on the _____ day of _____, 197____.

ATTEST: (SEAL)

CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 197____, at the hour of _____ o'clock _____ M., E.S.T.

CITY CLERK

Approved and signed by me this _____ day of _____, 197____, at the hour of _____ o'clock _____ M., E.S.T.

MAYOR

11 No. G-75-06-27 as amended

REPORT OF THE COMMITTEE ON FINANCE

, your Committee on Finance to whom was referred an Ordinance

Authorizing the Establishment Of A Trust For The Purpose of Administering Monies
to Be Received From The Lease Of The City Of Fort Wayne Light and Power Utility
to The Indiana & Michigan Electric Company and providing for the use of Such Monies.

have had said Ordinance under consideration and beg leave to report back to the Common
Council that said Ordinance PAS PASS.

Vivian G. Schridt - Chairman

William T. Hinga - Vice-Chairman

John Nichols

Winfield C. Moses, Jr.

Paul M. Burns

Therian J. Selznick
William T. Hinga
John Nichols

DATE 7-22-75 CONCURRED IN
CHARLES W. WESTERMAN, CITY CLERK

EXHIBIT "A"

TRUST AGREEMENT

1. Name. The trust hereby provided shall be known as "The City of Fort Wayne Community Trust."

2. Beneficiaries. This trust shall be administered for the general welfare and in the best interests of the citizens and residents of the City of Fort Wayne, Indiana. Although they are the beneficiaries hereof, the citizens and residents of the City of Fort Wayne, Indiana, do not acquire any personal or individual legal interest in, or any right to anticipate, alienate, assign, or otherwise encumber the income or principal of this trust, the trust being intended for the benefit of the citizens and residents as a whole City rather than for the benefit of any individuals. However, this provision does not impair the statutory liability of the trustees to the beneficiaries per Indiana Code 30-4-3-11, or the statutory remedies of the beneficiary against the trustee per Indiana Code 30-4-3-22.

3. Board of Trustees. The Board of Trustees of The City of Fort Wayne Community Trust shall consist of the duly elected or appointed persons holding the following public offices at any given time:

- 1) President of the Common Council of the City of Fort Wayne, Indiana
- 2) Chairperson of the Finance Committee of the Common Council of the City of Fort Wayne, Indiana;
- 3) Chairperson of the Public Utilities Committee of the Common Council of the City of Fort Wayne, Indiana;
- 4) Chairperson of the Board of Works Committee of the Common Council of the City of Fort Wayne, Indiana;
- 5) Members of the Board of Works of the City of Fort Wayne, Indiana;
- 6) Controller of the City of Fort Wayne, Indiana; and
- 7) Mayor of the City of Fort Wayne, Indiana.

The Chairperson of the Board of Trustees shall be the Mayor of the City of Fort Wayne, Indiana. The Mayor shall exercise a vote only in the event of a tie vote of the other members of the Board of Trustees.

All members of the Board of Trustees shall serve without compensation in other than salary and benefits to which they are legally entitled as holders of the respective public offices.

4. Responsibilities of Trustees. To accomplish the purposes of this trust, the Board of Trustees shall:

- 1) Fulfill all of its duties in the administration of this trust, according to the provisions set forth herein;
- 2) Consult with, and where necessary employ, the best qualified and most able investment specialists from the Fort Wayne banking and investment communities for guidance in the investment of the corpus of this trust; and
- 3) Prepare and publish, on a semi-annual basis, a full report and accounting of this trust, indicating all income, distributions, and investments thereof. This report shall be a matter of public record.

5. Investment of Trust Funds and Authority of Board of Trustees. The Trustee shall have the power with regard to all property in the Trust and all income therefrom from time to time or at any time:

a) To invest and reinvest the same in such tangible and intangible property as may be from time to time authorized for investments by an Indiana municipality.

b) To sell, exchange, convey, transfer, mortgage, pledge, borrow, lease, or otherwise dispose of any tangible or intangible property held by it, without the necessity of approval of any court therefor or notice to any person. No person dealing with the Board of Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety or any such sale or other disposition.

c) To vote, either in person or by proxy, any share of stock held as part of corpus of the trust; to exercise any and all rights or options pertaining thereto and to enter into agreements and consent to or oppose the reorganization, consolidation, merger, readjustment of financial structure

or sale of assets of any corporation or organization of the securities of which may be held in the corpus of the trust.

d) To collect the principal and income of such property as the same shall become due and payable and to give binding receipt therefor;

e) To take such action, whether by legal proceedings, compromise, abandonment or otherwise, as the Board of Trustees, in its discretion, shall deem to be in the best interests of the Trust.

f) To retain in, or convert to, cash or readily marketable securities without liability for interest or any other return thereon except as shall be actually realized. To lend money to the City of Fort Wayne at a reasonable rate of interest.

6. In all other respects except as herein specifically provided this Trust Agreement shall be governed by the trust laws of the State of Indiana.

7. Income of the Trust. The income of the trust to be administered by the Board of Trustees, shall be the sum of \$270,000 annually segregated into the trust account from the annual revenue derived from the lease of the Fort Wayne Light and Power Utility to the Indiana & Michigan Electric Company pursuant to General Ordinance No. G-18-74.

8. Purposes of the Trust. The Board of Trustees shall in each calendar year distribute the income of the trust in such manner as to:

a) Distribute \$270,000.00 into the corpus of the trust, in accordance with the provisions of Section 9 below; and

b) Pay the reasonable and necessary expenses incurred by the Board of Trustees in administering this trust.

9. Corpus of the Trust. The corpus of the trust shall be the monies distributed according to Section 8(a) of this Trust Agreement, plus the income derived from the investment of the corpus funds. In anticipation of the aforementioned lease continuing in full force and effect for its entire 35-year term, it is a purpose of this trust for the corpus to be secure from invasion and

distribution by the Board of Trustees while said lease continues in force. In the event that Indiana & Michigan Electric Company defaults on the lease or the lease is otherwise terminated, the Board of Trustees shall permit the corpus to be utilized by the City of Fort Wayne to reclaim the leased facility, pursuant to a duly enacted ordinance of the Common Council of the City of Fort Wayne. In all other circumstances, the corpus shall remain secure from invasion and distribution by the Board of Trustees, with the following exception: that this spendthrift provision may be broken and rendered null and void by a duly passed ordinance of the Common Council of the City of Fort Wayne, Indiana, following full public debate on the question of invading the corpus, including examination of alternatives by the Board of Trustees, its investment-advisers, the Mayor's Citizens Advisory Council or successor body, and an advisory referendum in which a majority of citizens of the City of Fort Wayne voting on this issue indicate their preference that this provision be so terminated. In the event that the aforementioned lease should run for its entire 35-year term, the corpus shall be made available to the City of Fort Wayne, Indiana, to be utilized in accordance with the directions of the Mayor and Common Council of the City of Fort Wayne in office at that time.

10. Severability. If any section of this trust agreement or part thereof is for any reason held invalid, such invalidity shall not affect the validity of the remaining portion or portions of this trust agreement, which shall remain in force and valid.

11. Payment of Expenses and Taxes. The Board of Trustees shall be reimbursed for any reasonable expenses, including reasonable accounting and reasonable counsel fees, incurred by it in the administration of the Trust. Such compensation and expenses may be paid by the City of Fort Wayne but until paid shall constitute a charge upon the corpus of the trust. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws, upon, or in respect of, the Trust or the income thereof shall be paid from income of the trust.

1
2 BILL NO. G-75-06-27

3 GENERAL ORDINANCE NO. G-_____

4 AN ORDINANCE Authorizing The Establishment Of A Trust
5 For The Purpose Of Administering Monies To Be
6 Received From The Lease Of The City Of Fort Wayne
7 Light And Power Utility To The Indiana & Michigan
8 Electric Company And Providing For The Use Of
9 Such Monies

10 WHEREAS, nearly every city in the country receives substantially
11 all of its financial support from taxes and other sources that are made available
12 on an annual basis; and

13 WHEREAS, it is impossible for the cities to estimate accurately the
14 amount of money which will become available at any time beyond the immediate
15 future; and

16 WHEREAS, the exigencies of budgeting are such that many cities
17 are required to devote a larger proportion of their revenues to current operating
18 expenses than is desirable; and

19 WHEREAS, a result of the aforesaid condition is that it is difficult
20 for cities to engage in realistic long term planning to assure fulfillment of their
21 needs for capital improvements; and

22 WHEREAS, the City of Fort Wayne finds itself in a unique position
23 among cities in that it is assured it will have available every year for 35 years
24 large sums of money from the lease of the City of Fort Wayne Light and Power
25 Utility to Indiana & Michigan Electric Company; and

26 WHEREAS, the revenues from said lease will represent the revenues
27 from said Light and Power Utility during the duration of the lease; and

28 WHEREAS, the occasion may arise, upon default in its obligations
29 under said lease by Indiana & Michigan Electric Company, or upon termination
30 of the lease, that the City of Fort Wayne may desire to reclaim said Light and
31 Power Utility, in which case it would be necessary for the City to reimburse
32 Indiana & Michigan Electric Company for extensions and additions to said Utility,
33 as provided in said Lease; and

34 WHEREAS, such reimbursements could be beyond the means of the
35 City at the time they were required to be made, which would render it impossible

APPROVED AS TO FORM
AND LEGALITY,


for the City to reclaim said Utility; and

WHEREAS, it is desirable that the City of Fort Wayne establish an account which is in effect a depreciation account in the amount of \$270,000.00 annually which will enable the City to reclaim said Light and Power Utility by reimbursing Indiana & Michigan for additional and extensions upon default of its obligations under said lease by Indiana & Michigan Electric Company or upon termination of said lease; and

WHEREAS, in the event said Lease should run for its entire 35-year term, said account properly invested would result in a sum of approximately \$30,000,000 which if left untouched in investment yielding a six (6) per cent return, would provide the City of Fort Wayne with an annual income of \$1,800,000 (equal to more than the final annual income from said Lease) in perpetuity; and

WHEREAS, it will be necessary to pay the general and administrative costs of said Lease, including the cost of pensions of retired employees of said Utility, which general and administrative costs will represent the operating expenses of said Utility; and

WHEREAS, there will be surplus funds left over; and

WHEREAS, it will be beneficial to the City that said surplus funds be used for capital improvements, which otherwise could be financed only by increasing the tax burden upon the citizens of the City; and

WHEREAS, the Board of Public Works presently administers the City's Cumulative Capital Improvement Fund; and

WHEREAS, such annual lease surplus in the Fort Wayne Light and Power Utility lease revenue account should be transferred to said Cumulative Capital Improvement Fund for purposes which will promote the cultural, recreational, public, civic or economic well being of the community in accordance with duly enacted ordinances passed by the Common Council of the City of Fort Wayne and approved by the Mayor of the City of Fort Wayne; and

WHEREAS, The Common Council of the City of Fort Wayne has examined and hereby approves the terms of a certain trust agreement having as its trustee a board of trustees, consisting of the President of the Common Council, the Chairman of the Finance Committee of said Council, the Chairman of the Public Utility Committee of said Council, the Chairman of the Board of Works Committee of said Council, the members of the Board of Public Works of the City, the City Controller, and the Mayor. The Mayor shall be Chairman of the Board of Trustees, a copy of said trust being attached hereto and identified as "Exhibit A".

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the proper officers of the City of Fort Wayne are hereby authorized and directed to execute the aforesaid trust agreement, and to carry out the terms and provisions thereof.

SECTION 2. That an amount equal to an annual balance after payment of general and administrative expense in the Fort Wayne Light and Power Utility lease fund be transferred regularly to the City of Fort Wayne Cumulative Capital Improvement Fund to be used for capital purposes of a nature previously enumerated in the body of this Ordinance.

SECTION 3. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.


Councilman

Read the first time in full and on motion by V. Schmeider seconded by Hinga, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197____, at _____ o'clock P.M., E.S.T.

Date: _____

Charles W. Whitehouse
CITY CLERK

Read the third time in full and on motion by _____, seconded by _____, and duly adopted, placed on its passage.
Passed (LOST) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
<u>TOTAL VOTES</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>BURNS</u>	_____	_____	_____	_____	_____
<u>HINGA</u>	_____	_____	_____	_____	_____
<u>KRAUS</u>	_____	_____	_____	_____	_____
<u>MOSES</u>	_____	_____	_____	_____	_____
<u>NUCKOLS</u>	_____	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	_____	_____	_____	_____	_____
<u>SCHMIDT, V.</u>	_____	_____	_____	_____	_____
<u>STIER</u>	_____	_____	_____	_____	_____
<u>TALARICO</u>	_____	_____	_____	_____	_____

DATE: _____

CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution, No _____ on the _____ day of _____, 197____.

ATTEST:

(SEAL)

CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 197____, at the hour of _____ o'clock _____ M., E.S.T.

CITY CLERK

Approved and signed by me this _____ day of _____, 197____, at the hour of _____ o'clock _____ M., E.S.T.

John H. Lamm
MAYOR

EXHIBIT A

TRUST AGREEMENT

1. Name. The trust hereby provided shall be known as "The City of Fort Wayne Community Trust."

2. Beneficiaries. This trust shall be administered for the general welfare and in the best interests of the citizens and residents of the City of Fort Wayne, Indiana. Although they are the beneficiaries hereof, the citizens and residents of the City of Fort Wayne, Indiana, do not acquire any personal or individual legal interest in, or any right to anticipate, alienate, assign, or otherwise encumber the income or principal of this trust, the trust being intended for the benefit of the citizens and residents as a whole City rather than for the benefit of any individuals. However, this provision does not impair the statutory liability of the trustees to the beneficiaries per Indiana Code 30-4-3-11, or the statutory remedies of the beneficiary against the trustee per Indiana Code 30-4-3-22.

3. Board of Trustees. The Board of Trustees of The City of Fort Wayne Community Trust shall consist of the duly elected or appointed persons holding the following public officers at any given time:

- 1) President of the Common Council of the City of Fort Wayne, Indiana
- 2) Chairperson of the Finance Committee of the Common Council of the City of Fort Wayne, Indiana;
- 3) Chairperson of the Public Utilities Committee of the Common Council of the City of Fort Wayne, Indiana;
- 4) Chairperson of the Board of Works Committee of the Common Council of the City of Fort Wayne, Indiana;
- 5) Members of the Board of Works of the City of Fort Wayne, Indiana;
- 6) Controllor of the City of Fort Wayne, Indiana; and
- 7) Mayor of the City of Fort Wayne, Indiana.

The Chairperson of the Board of Trustees shall be the Mayor of the City of Fort Wayne, Indiana.

All members of the Board of Trustees shall serve without compensation in other than the salary and benefits to which they are legally entitled as holders of their respective public officers.

4. Responsibilities of Trustees. To accomplish the purposes of this trust, the Board of Trustees shall:

- 1) Fulfill all of its duties in the administration of this trust, according to the provisions set forth herein;
- 2) Consult with, and where necessary employ, the best qualified and most able investment specialists from the Fort Wayne banking and investment communities for guidance in the investment of the corpus of this trust; and
- 3) Prepare and publish, on a semi-annual basis, a full report and accounting of this trust, indicating all income, distributions, and investments thereof. This report shall be a matter of public record.

5. Investment of Trust Funds and Authority of Board of Trustees. The Trustee shall have the power with regard to all property in the Trust and all income therefrom from time to time or at any time:

a) To invest and reinvest the same in such tangible and intangible property as may be from time to time authorized for investments by an Indiana municipality.

b) To sell, exchange, convey, transfer, mortgage, pledge, borrow, lease, or otherwise dispose of any tangible or intangible property held by it, without the necessity of approval of any court therefor or notice to any person. No person dealing with the Board of Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety or any such sale or other disposition.

c) To vote, either in person or by proxy, any share of stock held as part of corpus of the trust; to exercise any and all rights or options pertaining thereto and to enter into agreements and consent to or oppose the reorganization, consolidation, merger, readjustment of financial structure or

sale of assets of any corporation or organization the securities of which may be held in the corpus of the trust.

d) To collect the principal and income of such property as the same shall become due and payable and to give binding receipt therefor;

e) To take such action, whether by legal proceedings, compromise, abandonment or otherwise, as the Board of Trustees, in its discretion, shall deem to be in the best interests of the Trust.

f) To retain in or convert to cash or readily marketable securities without liability for interest or any other return thereon except as shall be actually realized. To lend money to the City of Fort Wayne at a reasonable rate of interest.

6. Income of the Trust. The "income of the trust" to be administered by the Board of Trustees, shall be the sum of \$270,000.00 annually segregated into the depreciation account by the Fort Wayne Light and Power Utility pursuant to General Ordinance No. G-_____.

7. Purposes of the Trust. The Board of Trustees shall in each calendar year distribute the income of the trust in such manner as to:

a) Distribute \$270,000.00 into the corpus of the trust, in accordance with the provisions of Section 8 below; and

b) Pay the reasonable and necessary expenses incurred by the Board of Trustees in administering this trust.

8. Corpus of the Trust. The corpus of the trust shall be the monies distributed according to Section 7(a) of this Trust Agreement, plus the income derived from the investment of the corpus funds. In anticipation of the aforementioned lease continuing in full force and effect for its entire 35-year term, it is a purpose of this trust for the corpus to be secure from invasion and distribution by the Board of Trustees while said lease continues in force. In the event that Indiana & Michigan Electric Company defaults on the lease or the lease is otherwise terminated, the Board of Trustees shall permit the corpus to

be utilized by the City of Fort Wayne to reclaim the leased facility, pursuant to a duly enacted ordinance of the Common Council of the City of Fort Wayne. In all other circumstances, the corpus shall remain secure from invasion and distribution by the Board of Trustees, with the following exception: that this spendthrift provision may be broken and rendered null and void by a duly passed ordinance of the Common Council of the City of Fort Wayne, Indiana, following full public debate on the question of invading the corpus, including examination of alternatives by the Board of Trustees, its investment=advisers, the Mayor's Citizens Advisory Council or successor body, and an advisory referendum in which a majority of citizens of the City of Fort Wayne voting on this issue indicate their preference that this provision be so terminated. In the event that the aforementioned lease should run for its entire 35-year term, the corpus shall be made available to the City of Fort Wayne, Indiana, to be utilized in accordance with the directions of the Mayor and Common Council of the City of Fort Wayne in office at that time.

9. Severability. If any section of this trust agreement or part thereof is for any reason held invalid, such invalidity shall not affect the validity of the remaining portion or portions of this trust agreement, which shall remain in force and valid.

10. Payment of Expenses and Taxes. The Board of Trustees shall be reimbursed for any reasonable expenses, including reasonable accounting and reasonable counsel fees, incurred by it in the administration of the Trust. Such compensation and expenses can be paid by the City of Fort Wayne but until paid shall constitute a charge upon the corpus of the trust. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws, upon, or in respect of, the Trust or the income thereof shall be paid from income of the trust.

LAW OFFICES

ROTHBERG, GALLMEYER, FRUECHTENICHT & LOGAN

SOL ROTHBERG
THOMAS A. GALLMEYER
GEORGE E. FRUECHTENICHT
THOMAS D. LOGAN
PHILLIP E. GUTMAN
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DONALD M. AIKMAN
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RICHARD E. FOX

AREA CODE 219
TELEPHONE 422-9454

INDIANA BANK BUILDING
FORT WAYNE, INDIANA
46802

June 24, 1975

Mayor Ivan A. Lebamoff
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, IN 46802

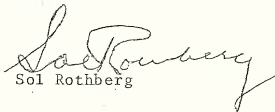
Dear Mayor Lebamoff:

Our law office has examined the City Attorney's memorandum to your office dated June 13, 1975, setting forth the legal basis and conclusions for establishment of a trust fund for City Utilities' lease revenues.

We are of the opinion that with respect to said memorandum, but without having examined the trust instrument, the development of the legal basis for creation of said trust fund accurately depicts the current status of law of this state, and that the conclusions reached are fair and reasonable in view of current interpretation of the laws of the State of Indiana.

Very truly yours

ROTHBERG, GALLMEYER,
FRUECHTENICHT & LOGAN


Sol Rothberg

RDR/jaw

Memorandum

To Ivan A. Lebamoff, Mayor Date June 23, 1973
From David B. Keller, City Attorney
Subject City Utilities - Trust Agreement

COPIES TO:

We have found very little authority directly in point on the various legal issues presented by your proposed trust. In all probability, the reason for this is that the economic restrictions of municipal financing are so severe that very few cities have ever found themselves in as fortunate position as Fort Wayne with an assured income coming in over a period of many years and with relatively insignificant expenses to be paid out of the income. Nor do many cities find themselves in a position where they are receiving large sums of money which permit capital expenditures over and above those contemplated by the normal budget. Accordingly, few cities, if any, have been faced with the problem of how to handle such funds.

The money will not be coming in for an unlimited time but the use of the trust provides a procedure under which income may be produced for as long as future city governments wish. No administration could leave a more lasting or beneficial legacy.

In my opinion the trust could, and should, be held valid. Arguments may be developed to the contrary but the trust rests on a respectable legal foundation and, at this time, such a foundation appears sufficiently sound. Even the wreckers and pedants may well hesitate before testing the foundation and running the risk of being saddled with the responsibility for depriving Fort Wayne of a rare and valuable opportunity.

I.

THE INDIANA CONSTITUTION DOES NOT PREVENT
ESTABLISHMENT OF THE TRUST

Newspaper stories to the contrary, there is nothing in the Indiana Constitution which would prevent the City from establishing such a trust. Only two provisions of the Constitution even refer to trusts. One, Article 8, §7, provides that "trust funds" held by the state for educational purposes, "shall remain inviolate, and be faithfully and exclusively applied to the purpose for which the trust was created." Article 11, §11 permits the General Assembly to invest trust funds in a bank with branches.

These constitutional provisions may not be construed as preventing a city from establishing a trust fund nor as governing the administration of such a fund.

II.

THE STATUTORY GRANT OF POWER TO CITIES IS TO
BE LIBERALLY CONSTRUED IN FAVOR OF THE CITIES.
FURTHER, THERE IS NOTHING IN THE STATUTES WHICH
WOULD PREVENT A CITY FROM ESTABLISHING A TRUST.
ACCORDINGLY, THE POWER TO ESTABLISH A TRUST
IS GRANTED BY IMPLICATION TO THE CITIES.

In 1971, the General Assembly enacted the "Powers of Cities Act," I.C. 18-1-1.5, by which it granted to cities broad powers to conduct their municipal and internal affairs without the necessity of seeking specific state legislation at every turn. Hopefully, this will permit the cities to adopt their own legislation as required by their own judgment as to local needs without being forced to resort to the Legislature for authorization. That body will be left free to concentrate on matters of statewide concern. (See Sato & Van Alstyne,

State and Local Government Law, p. 217 (1970).

The Act in question provides:

"All cities shall have the powers set forth in subsequent sections of this chapter [18-1-1.5-1 -- 18-1-1.5-30], which powers may be exercised within their territorial limits, and in such additional areas as specified herein, to the extent deemed by the appropriate branch, officer, department or agency of any city to be necessary or desirable in the public interest of its inhabitants. Any such power may be exercised by a city under authority of this Chapter only if and to the extent that such power is not by express provision denied by law or by express provision vested by any other law in the county, township, or the state, special taxing district or separate municipal or school corporation."

Later, in 1973, the General Assembly enacted 18-1-1.5-16 which provides:

"In addition to all powers specifically enumerated in sections 2 through 15 [18-1-1.5-2 -- 18-1-1.5-15] of this chapter, and any other power granted to a city or any agency thereof under any other law of this state, every city may, within its territorial jurisdiction, except as otherwise provided in this chapter [18-1-1.5-1 -- 18-1-1.5-30], exercise any power or perform any municipal or internal affairs, which is not prohibited by the Constitution of this state or the Constitution of the United States, and which is not by express provision denied by law or by express provision vested by any other law in a county, township or state, special taxing district or separate municipal or school corporation."

Further, I.C. 18-1-1.5-23, provides that a failure to enumerate a power in the statutes does not mean that a city does not possess such a power:

"The powers of cities as defined in this chapter [18-1-1.5-1 -- 18-1-1.5-30] shall be construed liberally in favor of such cities. A specific enumeration, or failure to enumerate, particular powers of cities in Section 1 [18-1-1.5-1] of this chapter or in any other law shall not be construed as limiting in any way the general and residual powers conferred upon

cities as stated in section 16 [18-1-1.5-16] of this Chapter. It is the intention of this chapter and the policy of the state to grant to cities full power and right to exercise all governmental authority necessary for the effective operation and conduct of government with respect to their municipal and internal affairs. The rule of law that cities have only those powers expressly conferred by statute, necessarily implied or dispensible to the declared objects and purposes of the corporation, and that any fair doubt as to the existence of a power shall be resolved against the existence thereof, shall have no application to the powers granted to cities herein."

These provisions from the Powers of Cities Act were construed in Barrick Realty, Inc. v. City of Gary (N.D. Ind. 1973) 354 F. Supp. 126, 34 Ind. Dec. 647, where the court upheld the validity of a city ordinance which was challenged as being beyond the powers of the City to enact. Judge Eschbach wrote:

"The State of Indiana clearly intended that, in the absence of specific denial or preemption, the powers of a city are to be limited only by the federal and state constitutions." 354 F. Supp. at 131.

The Court in Barrick clearly viewed the Powers of Cities Act in accord with the examination of these statutes in 49 Indiana Law Journal 482 (1974) (NOTE: Defining "Municipal or Internal Affairs": The Limits of Power for Indiana Cities). There it was pointed out that last sentence in I.C. 18-1-1.5-23 expressly forbids the use of "Dillion's Rule," an old common law provision under which cities could only exercise those powers specifically granted, necessarily implied or deemed indispensable to the municipal corporation, with any "fair doubt" as to the existence of a particular power to be resolved against the city. Id., 482-483. The Indiana Powers of Cities Act explicitly

reverses this rule by requiring liberal construction of the statutes, under the express "policy of the state to grant to cities full power and right to exercise all governmental authority necessary . . ." I.C. 18-1-1.5-23 (emphasis added). Consequently, the statutes serve to create a presumption of validity to local discretion in the exercise of power over a city's own affairs.

Also relevant here is the comment by Professor Sandalow:

"Uncertainty as to the extent of municipal power may also lead to what one commentator has termed 'municipal pussyfooting.' Officials not only hesitate to embark upon new programs, but at times employ the confusion created by joint legislative-municipal responsibility as a pretext for failing to take action. The buck can be passed to the legislature for failing to provide the necessary authority, while the legislature, in turn, can . . . with some justification, argue that the municipality already has sufficient power. A broad grant of municipal initiative, by contrast, serves to promote the visibility of governmental decision making by pinpointing responsibility." Sandalow, *The Limits of Municipal Power Under Home Rule*, 48 Minn. Law Rev. 643, 655-656 (1964).

Thus, it is clear that the state legislature, by enacting the Powers of Cities Act, sought to accomplish exactly what Sandalow refers to: more effective action by municipal governments by removing the uncertainty as to the authority of a city to manage its own affairs.

As discussed supra, there is no constitutional impediment to establishing the proposed trust arrangement. A search of the statutes reveals no express denial of the power, nor any delegation to or preemption by any other governmental body. And as noted in 15 McQuillen, Municipal Corporations §39.14:

"Seldom have municipal corporations had surplus monies for loan or investment. But where such a condition of affairs presents itself, the municipality has power to loan or invest in proper securities, at least where authorized by statute, or not forbidden by statute."

Therefore, the power for the City to establish the proposed trust, as an incident to its authority to lease and manage a municipal utility, is impliedly granted under the Indiana Powers of Cities Act.

III.

THE PROPOSED TRUST DOES NOT BIND SUBSEQUENT CITY ADMINISTRATIONS SO AS TO BE INVALID

The basic common law rule holds that a contract extending beyond the terms of municipal officers will bind their successors if the contract involves the exercise of a proprietary or business function, but will not bind successors if it impairs their free exercise of governmental or legislative functions.

By owning, operating and leasing its municipal utility, the City here, acts in its proprietary or business capacity, and thereby is permitted under the common law rule to manage its affairs concerning the utility as if it were a private concern, following proper business practices even if its acts were binding upon the City after a change in administration.

During the term of the lease, the City retains its ownership of the utility, and, the proposed trust provides the economic means necessary for the City to resume operation of the utility should the lease fail for any reason. Thus, the City is not abandoning its proprietary role by setting up the trust, since the very terms of the trust are designed to preserve the City's capabilities to operate the utility.

In addition, although the trust provides for the corpus of the trust to be uninvadable, it also includes a provision whereby a future City administration can break the spendthrift provision should some special circumstances arise which require the money in the trust to be used for other purposes. Consequently, regardless of the proprietary governmental aspect, the trust does not absolutely bind future administrations so as to invalidate the trust.

The common law rule is stated in detail in 56 Am. Jur. 2d Municipal Corporations, § 154:

"With respect to the power of a municipal council to enter, in behalf of the municipality, into a contract which will extend beyond the term for which the members of the council were elected, a distinction is drawn based upon the subject matter of the contract--whether legislative or governmental, or whether business or proprietary. Thus, where the contract involved relates to governmental or legislative functions of the council, or involves a matter of discretion to be exercised by the council unless the statute conferring power to contract clearly authorizes the council to make a contract extending beyond its own term, no power of the council exists, since the power conferred upon municipal councils to exercise legislative or governmental functions is conferred to be exercised as often as may be found needful or politic, and the council presently holding such powers is vested with no discretion to circumscribe or limit or diminish their efficiency, but must transmit them unimpaired to their successors. But in the exercise of the business powers of a municipal corporation, the municipality and its officers are controlled by no such rule, and they may lawfully exercise these powers in the same way, and in their exercise the municipality will be governed by the same rules which control a private individual or a business corporation under like circumstances. Under this distinction, it is generally held that a municipal council may contract for water supply, street lighting, gas supply, etc., and bind subsequent boards, such contracts being made in the exercise of the city's business or proprietary powers although a contract of this kind must be reasonable in the length of time for which it is to extend."

Early Indiana case law generally follows the common law rule. As early as 1892 our Supreme Court upheld a 25-year contract for the purchase of gas, stating:

"Every contract or ordinance in the nature of a contract does to some extent limit the control the power and authority of future councils . . . We discover nothing in the ordinance that contains any substantial limitation of the legislative power of the common council." City of Vincennes v. City Gaslight Co. 31 N.E. 573, 577

A 1969 decision by the Indiana Supreme Court seriously eroded the basic rule with regard to governmental powers. Southern Indiana Gas and Electric Co. v. City of Boonville, 248 N.E. 2d 343, dealt with a city's contract to purchase electricity, with a provision that the City, through its own electric utility would not provide electric service beyond its 1947 boundaries. When the City annexed new territory served by the Southern Indiana Gas & Electric Co., it sought to condemn and acquire the Company's facilities therein for the City's own utility. The City argued the contract provision was invalid because the city could not contract away its power of eminent domain, a governmental function, citing a predecessor case, Southern Indiana Gas and Electric Co. v City of Boonville, 20 N.E. 2d 648 (1939):

"The power of eminent domain is an attribute of sovereignty. . . . It cannot be contracted away, it may be resumed at will. . . Every contract made is subordinate to it."

In the 1969 case, the Court rejected this argument in a triumph of legalistic reasoning:

". . . unless there is some public policy involved, the parties are bound by the contractual obligations until the contract expires. The City of Boonville operates the

utility in a proprietary and private capacity and not as part of its sovereign rights. . . . The exercise of a municipality of its eminent domain powers in connection with its utility operations therefore involved a proprietary or a business-like decision. It is simply a business operation." 248 N.E. 2d at 345

"It follows that a utility . . . operated by the city, may make a contract which prevents it from thereafter taking property by use of its power of eminent domain. It has not lost the right to exercise the power of eminent domain, but has made a contract which prevents it from succeeding in such a case if it should bring an action of eminent domain." Id., 345

This holding may be viewed as allowing a city to impair future administrations' exercise of a purely governmental power when the city acts "in connection with its utility operation" in "a proprietary or a business-like decision."

Viewing the City of Fort Wayne trust arrangement in light of the Court's most recent statement on the issue in the 1969 Boonville case, it is clear that the trust goes no farther, and probably not even as far as the Boonville contract in binding future administration's governmental powers. Since the trust is an incident of the lease, its length may be defended as reasonable under Hester v. Town of Greenwood, 88 N.E. 498 (Ind. Sup. 1909). That case involved the granting of franchises, a function "which is universally recognized as the exercise of sovereign power." City of Spokane v. Spokane Gas & Fuel Co. (Wash. Sup. 1933), 26 P. 2d 1034, 1036. The Town of Greenwood had granted a 50-year franchise for supplying electricity and water to itself and its inhabitants. A statute provided a maximum term of 25 years for contracts supplying light and water to a town.

It was contended this statute should be construed together with the statute authorizing the granting of the franchises with the result that the franchises would also be limited to 25 years. There was no statutory limitation on the term for which a franchise could be granted and the court found this sufficient reason to reject the foregoing argument:

" * * * At all events the Legislature has not imposed any definite limit upon the term of the franchise to use the public ways and places which the city or town is authorized to grant. This was the province of the Legislature, and, that department not having deemed it necessary to limit the term of such franchises, we are not warranted in inserting such limitation by mere construction when the statute is so clear as not to be open to construction. The complaint is grounded upon the proposition that the statutes positively forbid the granting of water and light franchises for a term longer than 25 years, and that Ordinances 92 and 93 attempt to make such grants for 50 years, and are palpably ultra vires and void. In our opinion this contention cannot be sustained. We are not called upon to determine whether a water or light franchise for 50 years is under all circumstances unreasonable and intimate no opinion upon that question, but hold only that the grant of such a term in the case before us was not made in violation of an express prohibition of any statute." 88 N.E. at 500

Under the reasoning of the Hester case, the mere fact that the legislature authorized the leasing of municipal utilities without limiting the term of the leases would of itself be sufficient to prevent a court from construing the authority as applicable only to leases for an indefinite term of leases not extending beyond the term of office of this governing body which executed them. This reasoning should be applied to the trust as well.

As the Court noted in City of Vincennes, supra, any public improvement program binds future councils. It becomes their responsibility to

appropriate the necessary funds for the maintenance of streets, buildings, parks, etc. They are required to levy the necessary taxes for this purpose. Here, the present council is directing future councils to use the trust funds for capital expenditures but preserves the right for future councils to determine exactly how the money is to be spent while relieving them of the necessity of raising taxes.

The net result is less binding than a cumulative capital improvement fund. It is also less binding than would have been the case if the council had sold the utility or received the present discounted value of all future rent and used the proceeds for a capital improvement program.

Finally, with regard to the concept of binding future councils, the Indiana Supreme Court wrote in Board of Com'rs. v. Shields, 29 N.E. 385 (1891):

"As we have heretofore said, the board of commissioners is a corporation representing the county. From a legal standpoint, it is the county . . . It is a continuous body. While the personnel of its membership changes, the corporation continues unchanged. It has power to contract. Its contracts are the contracts of the board, and not of its members. An essential characteristic of a valid contract is that it is mutually binding upon the parties to it. A contract by a board of commissioners, the duration of which extends beyond the term of service of its then members, is not, therefore, invalid for that reason. As individuals they are not parties to it." Id., 387 (emphasis the court's).

This approach by the Court reflects the reality of the situation: that public office-holders who act in their official capacities do so in the name and on behalf of the municipality, since no government can act by itself, but only through the acts of its officials. Therefore, it is less important who holds the office than the nature of their acts on behalf of the governmental body.

In line with this concept of municipal government was the Court's rationale in Board of Commissioners of Jay County v Taylor, 123 Ind. 148 (1890). To decide the validity of a county contract for legal services which had been admittedly made with the intention of binding future administrations, the Court adopted a public policy test -- that unless the contract was contrary to public policy, it would be sustained:

"In considering this question, the effect upon the public interest must have controlling influence." Id., 151. By creating the public legacy embodied in the proposed trust, it can scarcely be argued that the public interest is anything

but enhanced.

The viewpoint followed in the above cited cases (Shields and Taylor) has found support outside of Indiana. For example, the California court, in upholding a city contract for legal services, wrote:

" . . . the law is settled in California that a contract made by the council or other, governing body of a municipality, which contract appears to have been just, fair and reasonable at the time of its execution, and prompted by the neceysities of the situation or in its nature advantageous to the municipality at the time it was entered into is neither void nor voidable merely because some of its executory features may extend beyond the terms of office of the members of such body." Denio v. City of Huntington Beach, 140 P.2d 392,397-398, 22 Cal. 2d 580 (1943) (cited with approval, Carruth v. City of Madera) 43 Cal. Rptr. 855, 860 (1965).

In conclusion, it is clear that the trust proposal falls within the City's power to manage its financial affairs relating to its ownership of a municipal utility as a proprietary function. The trust is designed to facilitate the City's return to control over the utility's operation, in the contingency that the lease should fail to run its full term. It preserves the power of the Common Council to exercise its discretion in allocating surplus revenues from the lease for any valid capital improvement, plus the option of breaking the "spendthrift" aspect of the corpus, thereby negating any potential invalidity of the trust due to improper binding of future administrations. The corpus is designed to create a potentially perpetual source of revenue to the City of

Fort Wayne, after Indiana and Michigan Electric Company stops its lease payments to the City, which indisputably is solid public policy. And finally, the trust's provisions for full public accountability of the trust's operations, plus the fact that the trustees will come from both the legislative and executive branches of the City government, will ensure the necessary checks-and-balances for the trust to function to the best interests of the citizens of Fort Wayne.

DIGEST SHEETTITLE OF ORDINANCE GENERAL

6-75-06-27

DEPARTMENT REQUESTING ORDINANCE _____

SYNOPSIS OF ORDINANCE AN ORDINANCE Authorizing The Establishment ATrust For The Purpose Of Administering A Portion Of The Monies ToBe Received From The Lease Of The City of Fort Wayne Light AndPower Utility to The Indiana & Michigan Electric Company AndProviding For The Use Of Such Monies, For The Payment Of GeneralAdministrative Expenses Of The Fort Wayne Light And Power Utility,And For The Transfer Of Unexpended Balances To The City'sCumulative Capital Improvement Fund.EFFECT OF PASSAGE Fiscal Control of lease revenue.EFFECT OF NON-PASSAGE No trust and no transfer to Cumulative CapitalImprovement Fund.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) _____

ASSIGNED TO COMMITTEE (PRESIDENT) _____

Finance



CITY OF FORT WAYNE

FORT WAYNE, INDIANA

CHARLES W. WESTERMAN
CITY CLERK

July 23, 1975

Miss Helen Libbing
Fort Wayne Newspapers, Inc.
600 West Main Street
Fort Wayne, Indiana 46802

Dear Miss Libbing:

Please give the attached full coverage on the dates of July 26 and August 2, 1975, in both the News Sentinel and Journal Gazette.

RE: Legal Notice for Common Council
of Fort Wayne, Indiana

Bill No. G-75-06-27 (AS AMENDED)
General Ordinance No. G-21-75
Trust Agreement

Bill No. G-75-07-14
General Ordinance No. G-22-75
Vacation of Alley

Bill No. Z-75-03-15
Zoning Map Ordinance No. Z-08-75
Zoning Map No. E-9

Please send us six (6) copies of the Publisher's Affidavit from both newspapers.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Charles W. Westerman".

Charles W. Westerman
City Clerk

CW/ne
Encl. 3

Notice is hereby given that on the 22nd day of July, 1975, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. G-21-75 (AS AMENDED) G-21-75 General Ordinance, to-wit:

BILL NO. G-21-75 (As Amended)
GENERAL ORDINANCE NO. G-21-75
AN ORDINANCE Authorizing The Establishment Of A Trust For The Purpose Of Administering Monies To Be Received From The Lease Of The City Of Fort Wayne Light And Power Utility To The Indiana & Michigan Electric Company And Providing For The Use Of Such Monies

WHEREAS, nearly every city in the country receives substantially all of its financial support from taxes and other sources that are made available on an annual basis; and

WHEREAS, it is impossible for the cities to estimate accurately the amount of money which will become available at any time beyond the immediate future; and

WHEREAS, the exigencies of budgeting are such that many cities are required to devote a larger proportion of their revenues to current operating expenses than is desirable; and

WHEREAS, a result of the aforesaid condition is that it is difficult for cities to engage in realistic long term planning to assure fulfillment of their needs for capital improvements; and

WHEREAS, the City of Fort Wayne finds itself in a unique position among cities in that it is assured it will have available every year for 35 years large sums of money from the lease of the City of Fort Wayne Light and Power Utility to Indiana & Michigan Electric Company; and

WHEREAS, the revenues from said lease will represent the revenues from said Light and Power Utility during the duration of the lease; and

WHEREAS, the occasion may arise, upon default in its obligations under said lease by Indiana & Michigan Electric Company, or upon termination of the lease, that the City of Fort Wayne may desire to reclaim said Light and Power Utility, in which case it would be necessary for the City to reimburse for extensions and additions to said Utility, as provided in said Lease; and

WHEREAS, such reimbursements could be beyond the means of the City at the time they were required to be made, which would render it impossible for the City to reclaim said Utility; and

WHEREAS, it is desirable that the City of Fort Wayne establish a trust account, which is in effect a depreciation account, in the amount of \$270,000.00 annually which will enable the City to reclaim said Light and Power Utility by reimbursing Indiana & Michigan for additions and extensions upon default of its obligations under said lease by Indiana & Michigan Electric Company or upon termination of said lease; and

WHEREAS, in the event said Lease should run for its entire 35-year term, said trust account properly invested would produce a sum of approximately \$30,000,000 which, if left untouched in investments yielding a six (6) per cent return, would provide the City of Fort Wayne with an annual income of \$1,800,000 (equal to more than the final annual income from said Lease) in perpetuity; and

WHEREAS, it will be necessary to pay the general and administrative costs of said Lease, including the cost of pensions of retired employees of said Utility, which general and administrative costs will represent the operating expenses of said Utility; and

WHEREAS, there will be surplus funds left over; and

WHEREAS, it will be beneficial to the City that said surplus funds be used for capital improvements, which otherwise could be financed only by increasing the tax burden upon the citizens of the City; and

WHEREAS, the Board of Public Works presently administers the City's Cumulative Capital Improvement Fund; and

WHEREAS, such annual lease surplus in the Fort Wayne Light and Power Utility lease revenue account should be transferred to said Cumulative Capital Improvement Fund for purposes which will promote the cultural, recreational, public, civic or economic well-being of the community in accordance with duly enacted ordinances passed by the Common Council of the City of Fort Wayne and approved by the Mayor of the City of Fort Wayne; and

WHEREAS, The Common Council of the City of Fort Wayne has examined and hereby approves the terms of a certain trust agreement, (a copy of which is attached hereto and identified as Exhibit "A") having as its trustee a board of trustees, consisting of the President of the Common Council, the Chairman of the Finance Committee of said Council, the Chairman of the Public Utility Committee of said Council, the Chairman of the Board of Works Committee of said Council, the members of the Board of Public Works of the City, the City Controller, and the Mayor. The Mayor shall be Chairman of the Board of Trustees.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the proper officers of the City of Fort Wayne are hereby authorized and directed to execute the aforesaid trust agreement, and to carry out the terms and provisions thereof.

SECTION 2. That an amount equal to the annual revenue derived from the lease of the Fort Wayne Light and Power Utility to the Indiana and Michigan Electric Company after payment of general and administrative expenses of said Fort Wayne Light and Power Utility, including pension obligations, the cost of lease supervision and general operating expenses, and after payment of \$270,000 annually to the aforesaid trust account shall be transferred regularly to the City of Fort Wayne Cumulative Capital Improvement Fund to be used for capital purposes of a nature previously enumerated in the body of this Ordinance.

SECTION 3. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.

VIVIAN G. SCHMIDT
Councilman

EXHIBIT "A"

TRUST AGREEMENT

1. Name. The trust hereby provided shall be known as, "The City of Fort Wayne Community Trust."

2. Beneficiaries. This trust shall be administered for the general welfare and in the best interests of the citizens and residents of the City of Fort Wayne, Indiana. Although they are the beneficiaries hereof, the citizens and residents of the City of Fort Wayne, Indiana, do not acquire any personal or individual legal interest in, or any right to anticipate, alienate, assign, or otherwise encumber the income or principal of this trust, the trust being intended for the benefit of the citizens and residents as a whole City rather than for the benefit of any individuals. However, this provision does not impair the statutory liability of the trustees to the beneficiaries per Indiana Code 30-4-3-11, or the statutory remedies of the beneficiary against the trustee per Indiana

for the benefit of the City rather than for the benefit of any individuals. However, this provision does not impair the statutory liability of the trustees to the beneficiaries per Indiana Code 30-4-3-11, or the statutory remedies of the beneficiary against the trustee per Indiana Code 30-4-3-22.

3. Board of Trustees The Board of Trustees of The City of Fort Wayne Community Trust shall consist of the duly elected or appointed persons holding the following public offices at any given time:

- 1) President of the Common Council of the City of Fort Wayne, Indiana
- 2) Chairperson of the Finance Committee of the Common Council of the City of Fort Wayne, Indiana
- 3) Chairperson of the Public Utilities Committee of the Common Council of the City of Fort

Wayne, Indiana:

- 4) Chairperson of the Board of Works, Committee of the Common Council of the City of Fort Wayne, Indiana
- 5) Members of the Board of Works of the City of Fort Wayne, Indiana
- 6) Controller of the City of Fort Wayne, Indiana; and
- 7) Mayor of the City of Fort Wayne, Indiana.

The Chairperson of the Board of Trustees shall be the Mayor of the City of Fort Wayne, Indiana. The Mayor shall exercise a vote only in the event of a tie vote of the other members of the Board of Trustees.

All members of the Board of Trustees shall serve without compensation in other than salary and benefits to which they are legally entitled as holders of the respective public offices.

4. Responsibilities of Trustees. To accomplish the purpose of this trust, the Board of Trustees shall:

- 1) Fulfill all of its duties in the administration of this trust, according to the provisions set forth herein;

2) Consult with, and where necessary employ, the best qualified and most able investment specialists from the Fort Wayne banking and investment communities for guidance in the investment of the corpus of this trust; and

- 3) Prepare and publish, on a semi-annual basis, a full report and accounting of this trust, indicating all income, distributions, and investments thereof. This report shall be a matter of public record.

5. Investment of Trust Funds and Authority of Board of Trustees. The Trustees shall have the power with regard to all property in the Trust and all income therefrom from time to time or at any time:

- a) To invest and reinvest the same in such tangible and intangible property as may be from time to time authorized for investments by an Indiana municipality;

b) To sell, exchange, convey, transfer, mortgage, pledge, borrow, lease, or otherwise dispose of any tangible or intangible property held by it, without the necessity of approval of any court hereof or notice to any person. No person dealing with the Board of Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety or any such sale or other disposition;

- c) To vote, either in person or by proxy, any share of stock held as part of corpus of the trust; to exercise any and all rights or options pertaining thereto and to enter into agreements and consent to or oppose the reorganization, consolidation, merger, readjustment of financial structure or sale of assets of any corporation or organization of the securities of which may be held in the corpus of the trust;

d) To collect the principal and income of such property as the same shall become due and payable and to give binding receipt therefor;

- e) To take such action, whether by legal proceedings, compromise, abandonment or otherwise, as the Board of Trustees, in its discretion, shall deem to be in the best interest of the Trust;

f) To retain in, or convert to, cash or readily marketable securities without liability for interest or any other return thereon except as shall be actually realized. To lend money to the City of Fort Wayne at a reasonable rate of interest;

6. In all other respects except as herein specifically provided this Trust Agreement shall be governed by the trust laws of the State of Indiana.

7. Income of the Trust. The income of the trust to be administered by the Board of Trustees, shall be the sum of \$270,000 annually segregated into the trust account from the annual revenue derived from the lease of the Fort Wayne Light and Power Utility to the Indiana & Michigan Electric Company pursuant to General Ordinance No. G-18-74.

8. Purposes of the Trust. The Board of Trustees shall in each calendar year distribute the income of the trust in such manner as to:

- a) Distribute \$270,000.00 into the corpus of the trust, in accordance with the provisions of Section 9 below; and

b) Pay the reasonable and necessary expenses incurred by the Board of Trustees in administering this trust.

9. Corpus of the Trust. The corpus of the trust shall be the monies distributed according to Section 8(a) of this Trust Agreement, plus the income derived from the investment of the corpus funds. In anticipation of the aforementioned lease continuing in full force and effect for its entire 25-year term, it is a purpose of this trust for the corpus to be secure from invasion and distribution by the Board of Trustees while said lease continues in force. In the event that the Indiana & Michigan Electric Company defaults on the lease or the lease is otherwise terminated, the Board of Trustees shall permit the corpus to be utilized by the City of Fort Wayne to reclaim the leased facility, pursuant to a duly enacted ordinance of the Common Council of the City of Fort Wayne. In all other circumstances, the corpus shall remain secure from invasion and distribution by the Board of Trustees, with the following exception: that this spendthrift provision may be broken and rendered null and void by a duly passed ordinance of the Common Council of the City of Fort Wayne, Indiana, following full public debate on the question of invading the corpus, including examination of alternatives by the Board of Trustees, its investment advisers, the Mayor's Citizens Advisory Council or successor body, and an advisory referendum in which a majority of citizens of the City of Fort Wayne voting on this issue indicate their preference that this provision be so terminated. In the event that the aforementioned lease should run for its entire 25-year term, the corpus shall be made available to the City of Fort Wayne, Indiana, to be utilized in accordance with the directions of the Mayor and Common Council of the City of Fort Wayne in office at that time.

10. Severability. If any section of this trust agreement or part thereof is for any reason held invalid, such invalidity

ate Board of Accounts

General Form No. 99 P (Rev 1

f Fort Wayne, Indiana
(mental Unit)

To NEWS-SENT INEL

County, Ind.

FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

after (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) number of equivalent lines

number of lines

number of lines

number of lines

total number of lines in notice

ARGES

lines, 1 column wide equals 457 equivalent lines at .288¢ per line

charge for notices containing rule or tabular work (50 per cent of above

extra proofs of publication (50 cents for each proof in excess of two)

TOTAL AMOUNT OF CLAIM

NG COST

single column 11 ems

Size of type 5 1/2 point

insertions 2

Size of quad upon which type is cast 5 1/2

sion and penalties of Ch. 89, Acts 1967,

he foregoing account is just and correct, that the amount claimed is legally due, after allowing all of the same has been paid.

assets of any corporation or organization of the securities of which may be held in the corpus of the trust.

9) To collect the principal and income of such property as the same shall become due and payable and to give binding receipt therefor.

a) To take such action, whether by legal proceedings, compromise, abandonment or otherwise, as the Board of Trustees, in its discretion, shall deem to be in the best interest of the Trust.

f) To retain in, or convert to, cash or readily marketable securities without liability for interest or any other return thereon except as shall be actually realized. To lend money to the City of Fort Wayne at a reasonable rate of interest.

6. In all other respects except as herein specifically provided this Trust Agreement shall be governed by the trust laws of the State of Indiana.

7. Income of the Trust: The income of the trust to be administered by the Board of Trustees, shall be the sum of \$270,000 annually segregated into the trust account from the annual revenue derived from the lease of the Fort Wayne Light and Power Utility to the Indiana & Michigan Electric Company pursuant to General Ordinance No. G-18.

8. Purposes of the Trust: The Board of Trustees shall in each calendar year distribute the income of the trust in such manner as to:

a) Distribute \$270,000.00 into the corpus of the trust, in accordance with the provisions of Section 9 below; and
b) Pay the reasonable and necessary expenses incurred by the Board of Trustees in administering this trust.

9. Corpus of the Trust: The corpus of the trust shall be the monies distributed according to Section 8(a) of this Trust Agreement, plus the income derived from the investment of the corpus funds. In anticipation of the aforementioned lease continuing in full force and effect for its entire 25-year term, it is the purpose of this trust for the trust to be secure from invasion and distribution by the Board of Trustees while said lease continues in force. In the event that Indiana & Michigan Electric Company defaults on the lease or the lease is otherwise terminated, the Board of Trustees shall permit the corpus to be utilized by the City of Fort Wayne to reclaim the leased facility pursuant to a duly enacted ordinance of the Common Council of the City of Fort Wayne. In all other circumstances, the corpus shall remain secure from invasion and distribution by the Board of Trustees, with the following exception: that this spendthrift provision may be broken and rendered null and void by a duly passed ordinance of the Common Council of the City of Fort Wayne, Indiana, following full public debate on the question of invading the corpus, including examination of alternatives by the Board of Trustees, its investment advisors, the Mayor's Citizens Advisory Council or successor body, and an advisory referendum in which a majority of citizens of the City of Fort Wayne, voting on this issue indicate their preference; that this provision be so terminated. In the event that the aforementioned lease should run for its entire 25-year term, the corpus shall be made available to the City of Fort Wayne, Indiana, to be utilized in accordance with the directions of the Mayor and Common Council of the City of Fort Wayne in office at that time.

10. Severability: If any section of this trust agreement or part thereof is for any reason held invalid, such invalidity shall not affect the validity of the remaining portion or portions of this trust agreement, which shall remain in force and valid.

11. Payment of Expenses and Taxes: The Board of Trustees shall be reimbursed for any reasonable expenses, including reasonable accounting and reasonable counsel fees, incurred by it in the administration of the Trust. Such compensation and expenses may be paid by the City of Fort Wayne but will not be paid shall constitute a charge upon the corpus of the trust. All taxes of any kind and all kinds whatsoever that may be levied or assessed under existing or future laws, upon, or in respect of, the Trust or the income thereof shall be paid from income of the trust.

Read the third time in full and on motion by V. Schmidt, second by J. H. Kraus, and duly adopted, placed on its passage PASSED by the following vote:
Ayes: Seven: Burns, Higon, Kraus, Nickels, V. Schmidt, Hilger, Talarico.
Nays: Two: Noses, D. Schmidt.

Dated: 7-22-75 Charles W. Westernman
City Clerk

Approved and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-2175 on the 22nd day of July, 1975.

ATTEST: (SEAL)
Charles W. Westernman, James S. Silvers, City Clerk Presiding Officer
Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 22nd day of July, 1975, at the hour of 10:00 o'clock A.M., E.S.T.

Charles W. Westernman City Clerk

Approved and signed by me this 23rd day of July, 1975, at the hour of 11:00 o'clock A.M., E.S.T.

Ivan A. Lebarnett Mayor

I, Charles W. Westernman, Clerk of the City of Fort Wayne, Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of General Ordinance No. G-2175 passed by the Common Council of the City of Fort Wayne, Indiana, on the 22nd day of July, 1975, and that said Ordinance was duly signed and approved by the Mayor on the 22nd day of July, 1975 and now remains on file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 23rd day of July, 1975.

CHARLES W. WESTERMAN
CITY CLERK

SEAL 275-8-2

State Board of Accounts

of Fort Wayne
(mental Unit)

County, Ind.

General Form No. 99 P (Rev 1967)

To NEWS-SENTINEL Dr.

FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

atter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) number of equivalent lines

number of lines

number of lines

number of lines

total number of lines in notice

ARGES

lines, 1 column wide equals 457 equivalent lines at 288¢ cents per line

charge for notices containing rule or tabular work (50 per cent of above

extra proofs of publication (50 cents for each proof in excess of two)

TOTAL AMOUNT OF CLAIM =

NG COST

single column 11 ems

Size of type 5 1/2 point

insertions 2

Size of quad upon which type is cast 5 1/2

sion and penalties of Ch. 89, Acts 1967,

the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just of the same has been paid.

Title Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana

ALLEN County ss

Personally appeared before me, a notary public in and for said county and state, the undersigned, V. E. Gerken

that She is Clerk who, being duly sworn, says of the

NEWS-SENTINEL

a DAILY newspaper of general circulation printed and published in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for two time, the dates of publication being as follows:

7/26 & 8/2/75

Subscribed and sworn to before me this 2nd day of August 1975

Notary Public

My commission expires October 25, 1975

To.....NEWS-SENT INEL.....Dr

FORT WAYNE, INDIANA

LINE COUNT

Head	number of lines	
1	1	
2	2	
3	3	
4	4	
5	5	
6	6	
7	7	
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99	99	
100	100	

Body	number of lines	<u>455</u>
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Tail	number of lines	<u>2</u>
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Total number of lines in notice	457
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COMPUTATION OF CHARGES

457 lines 1 columns wide equals 457 equivalent lines at .288¢ cents per line 131.62

Additional charge for notices containing rule or tabular work (50 per cent of above amount)

Charge for extra proofs of publication (50 cents for each proof in excess of two)	<u>2.00</u>
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TOTAL AMOUNT OF CLAIM = \$133.62

DATA FOR COMPUTING COST

Width of single column 11 ems

Size of type $5\frac{1}{2}$ point

Number of insertions...2...

Size of quad upon which type is cast $5\frac{1}{2}$

Pursuant to the provision and penalties of Ch. 89, Acts 1967.

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date August 2, 19 75

Title Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana

ALLEN County 28

Personally appeared before me, a notary public in and for said county and state, the undersigned, V. E. Gerken who being duly sworn, says

that.....She is.....Clerk.....of the.....

NEWS-SENTINEL

DAILY newspaper of general circulation printed and published
in the English language in the city of **FORT WAYNE, INDIANA**

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for two _____

time, s the dates of publication being
as follows:

7/26 & 8/2/75

Subscribed and sworn to before me this, 2nd day of August, 1975

Notary Public

My commission expires October 25, 1975

Notice is hereby given that on the 22nd day of July, 1975, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. G-75-06-37 (AS AMENDED) G-21-75 General Ordinance, to-wit:

BILL NO. G-75-06-37 (AS AMENDED)
GENERAL ORDINANCE NO. G-21-75
AN ORDINANCE Authorizing The Establishment Of A Trust For The Purpose Of Administering Monies To Be Received From The Lease Of The City Of Fort Wayne Light And Power Utility To The Indiana & Michigan Electric Company And Providing For The Use Of Such Monies

WHEREAS, nearly every city in the country receives substantially all of its financial support from taxes and other sources that are made available on an annual basis; and

WHEREAS, it is impossible for the cities to estimate accurately the amount of money which will become available at any time beyond the immediate future; and

WHEREAS, the exigencies of budgeting are such that many cities are required to devote a larger proportion of their revenues to current operating expenses than is desirable; and

WHEREAS, a result of the aforesaid condition is that it is difficult for cities to engage in realistic long term planning to assure fulfillment of their needs for capital improvements; and

WHEREAS, the City of Fort Wayne finds itself in a unique position among cities in that it is assumed it will have available every year for 35 years large sums of money from the lease of the City of Fort Wayne Light and Power Utility to Indiana & Michigan Electric Company; and

WHEREAS, the revenues from said lease will represent the revenues from said Light and Power Utility during the duration of the lease; and

WHEREAS, the occasion may arise, upon default in its obligations under said lease by Indiana & Michigan Electric Company, or upon termination of the lease, that the City of Fort Wayne may desire to reclaim said Light and Power Utility, in which case it would be necessary for the City to reimburse Indiana & Michigan Electric Company for extensions and additions to said Utility, as provided in said Lease; and

WHEREAS, such reimbursements could be beyond the means of the City at the time they were required to be made, which would render it impossible for the City to reclaim said Utility; and

WHEREAS, it is desirable that the City of Fort Wayne establish a trust account, which is in effect a depreciation account, in the amount of \$270,000.00 annually which will enable the City to reclaim said Light and Power Utility by reimbursing Indiana & Michigan for additions and extensions upon default of its obligations under said lease by Indiana & Michigan Electric Company or upon termination of said lease; and

WHEREAS, in the event said Lease should run for its entire 35-year term, said trust account properly invested would produce a sum of approximately \$30,000,000 which, if left untouched in investments yielding a six (6) per cent return, would provide the City of Fort Wayne with an annual income of \$1,800,000 (equal to more than the final annual income from said Lease) in perpetuity; and

WHEREAS, it will be necessary to pay the general and administrative costs of said Lease, including the cost of pensions of retired employees of said Utility, which general and administrative costs will represent the operating expenses of said Utility; and

WHEREAS, there will be surplus funds left over; and

WHEREAS, it will be beneficial to the City that said surplus funds be used for capital improvements, which otherwise could be financed only by increasing the tax burden upon the citizens of the City; and

WHEREAS, the Board of Public Works presently administers the City's Cumulative Capital Improvement Fund; and

WHEREAS, such annual lease surplus in the Fort Wayne Light and Power Utility lease revenue account should be transferred to said Cumulative Capital Improvement Fund for purposes which will promote the cultural, recreational, public, civic or economic well-being of the community in accordance with duly enacted ordinances passed by the Common Council of the City of Fort Wayne and approved by the Mayor of the City of Fort Wayne; and

WHEREAS, The Common Council of the City of Fort Wayne has examined and hereby approves the terms of a certain trust agreement, (a copy of which is attached hereto and identified as Exhibit "A") having as its trustee a board of trustees, consisting of the President of the Common Council, the Chairman of the Finance Committee of said Council, the Chairman of the Public Utility Committee of said Council, the Chairman of the Board of Works Committee of said Council, the members of the Board of Public Works of the City, the City Controller, and the Mayor. The Mayor shall be Chairman of the Board of Trustees.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the proper officers of the City of Fort Wayne are hereby authorized and directed to execute the aforesaid trust agreement, and to carry out the terms and provisions thereof.

SECTION 2. That an amount equal to the annual revenue derived from the lease of the Fort Wayne Light and Power Utility to the Indiana & Michigan Electric Company after payment of general and administrative expenses

of said Fort Wayne Light and Power Utility, including pension obligations, the cost of lease supervision and general operating expenses, and after payment of \$270,000 annually to the aforesaid trust account shall be transferred regularly to the City of Fort Wayne Cumulative Capital Improvement Fund to be used for capital purposes of a nature previously enumerated in the body of this Ordinance.

SECTION 3. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.

VIVIAN G. SCHMIDT
Councilman

EXHIBIT "A"

TRUST AGREEMENT

1. Name. The trust hereby provided shall be known as "The City of Fort Wayne Community Trust."

2. Beneficiaries. This trust shall be administered for the general welfare and in the best interests of the citizens and residents of the City of Fort Wayne, Indiana. Although they are the beneficiaries hereof, the citizens and residents of the City of Fort Wayne, Indiana, do not acquire any personal or individual legal interest in, or any right to anticipate, alienate, assign, or otherwise encumber the income or principal of this trust, the trust being intended for the benefit of the citizens and residents as a whole City rather than for the benefit of any individuals. However,

1. Beneficiaries. This trust shall be administered for the general welfare and in the best interest of the citizens and residents of the City of Fort Wayne, Indiana. Although they are the beneficiaries hereof, the citizens and residents of the City of Fort Wayne, Indiana, do not acquire any personal or individual legal interest in, or any right to anticipate, alienate, assign, or otherwise encumber the income or principal of this trust, the trust being intended for the benefit of the citizens and residents as a whole City rather than for the benefit of any individuals. However, this provision does not impair the statutory liability of the trustees to the beneficiaries per Indiana Code 30-4-3-11, or the statutory remedies of the beneficiary against the trustees per Indiana Code 30-4-3-22.

2. Board of Trustees. The Board of Trustees of The City of Fort Wayne Community Trust shall consist of the duly elected or appointed persons holding the following public offices at any given time:

- 1) President of the Common Council of the City of Fort Wayne, Indiana;
- 2) Chairperson of the Finance Committee of the Common Council of the City of Fort Wayne, Indiana;
- 3) Chairperson of the Public Utilities Committee of the Common Council of the City of Fort Wayne, Indiana;
- 4) Chairperson of the Board of Works Committee of the Common Council of the City of Fort Wayne, Indiana;
- 5) Members of the Board of Works of the City of Fort Wayne, Indiana;
- 6) Controller of the City of Fort Wayne, Indiana; and
- 7) Mayor of the City of Fort Wayne, Indiana.

The Chairperson of the Board of Trustees shall be the Mayor of the City of Fort Wayne, Indiana. The Mayor shall exercise a vote only in the event of a tie vote of the other members of the Board of Trustees.

All members of the Board of Trustees shall serve without compensation in other than salary and benefits to which they are legally entitled as holders of the respective public offices.

4. Responsibilities of Trustees. To accomplish the purpose of this trust, the Board of Trustees shall:

- 1) Fulfill all of its duties in the administration of this trust, according to the provisions set forth herein;
 - 2) Consult with, and where necessary employ, the best qualified and most able investment specialists from the Fort Wayne banking and investment communities for guidance in the investment of the corpus of this trust; and
 - 3) Prepare and publish, on a semi-annual basis, a full report and accounting of this trust, indicating all income, distributions, and investments thereof. This report shall be a matter of public record.
5. Investment of Trust Funds and Authority of Board of Trustees. The Trustees shall have the power with regard to all property in the Trust and all income therefrom from time to time or at any time:
- a) To invest and reinvest the same in such tangible and intangible property, as may be from time to time authorized for investments by an Indiana municipality;
 - b) To sell, exchange, convey, transfer, mortgage, pledge, borrow, lease, or otherwise dispose of any tangible or intangible property held by it, without the necessity of approval of any court therefor or notice to any person. No person dealing with the Board of Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition;
 - c) To vote, either in person or by proxy, any share of stock held as part of corpus of the trust, to exercise any and all rights or options pertaining thereto and to enter into agreements and consent to or oppose the reorganization, dissolution, merger, readjustment of financial structure or sale of assets of any corporation or organization of the securities of which may be held in the corpus of the trust;
 - d) To collect the principal and income of such property as the same shall become due and payable and to give binding receipt therefor;
 - e) To take such action, whether by legal proceedings, compromise, abandonment or otherwise, as the Board of Trustees, in its discretion, shall deem to be in the best interest of the trust;
 - f) To retain in, or convert to, cash or readily marketable securities without liability for interest or any other return thereon except as shall be actually realized. To lend money to the City of Fort Wayne at a reasonable rate of interest;
 - g) In all other respects except as herein specifically provided this Trust Agreement shall be governed by the trust laws of the State of Indiana.

7. Income of the Trust. The income of the trust to be administered by the Board of Trustees, shall be the sum of \$270,000 annually segregated into the trust account from the annual revenue derived from the lease of the Fort Wayne Light and Power Utility to the Indiana & Michigan Electric Company pursuant to General Ordinance No. G-18-74.

8. Purposes of the Trust. The Board of Trustees shall in each calendar year distribute the income of the trust in such manner as to:

- a) Distribute \$270,000.00 into the corpus of the trust, in accordance with the provisions of Section 9 below; and
 - b) Pay the reasonable and necessary expenses incurred by the Board of Trustees in administering this trust.
9. Corpus of the Trust. The corpus of the trust shall be the monies distributed according to Section 8(a) of this Trust Agreement, plus the income derived from the investment of the corpus funds, in anticipation of the aforementioned lease continuing in full force and effect for its 25-year term. It is a purpose of this trust for the corpus to be secure from invasion and distribution by the Board of Trustees while said lease continues in force. In the event that Indiana & Michigan Electric Company defaults on the lease or the lease is otherwise terminated, the Board of Trustees shall permit the corpus to be utilized by the City of Fort Wayne to reclaim the leased facility pursuant to a duly enacted ordinance of the Common Council of the City of Fort Wayne. In all other circumstances, the corpus shall remain secure from invasion and distribution by the Board of Trustees, with the following exception: that this spendthrift provision may be broken and rendered null and void by a duly passed ordinance of the Common Council of the City of Fort Wayne, Indiana, following full public debate on the question of invading the corpus, including examination of alternatives by the Board of Trustees, its investment advisers, the Mayor's Citizens Advisory Council or successor body, and an advisory referendum in which a majority of citizens of the City of Fort Wayne voting on this issue indicate their preference.

State Board of Accounts
of Fort Wayne
(Mental Unit)

General Form No. 99 P (Rev. 19

To JOURNAL-GAZETTE

FORT WAYNE, INDIANA

County, Ind.

PUBLISHER'S CLAIM

atter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) number of equivalent lines

number of lines

455

number of lines

2

number of lines

457

total number of lines in notice

RGES

es, 1 columns wide equals 457 equivalent lines at .288¢ its per line

\$ 13

charge for notices containing rule or tabular work (50 per cent of above

extra proofs of publication (50 cents for each proof in excess of two)

\$ 13

TOTAL AMOUNT OF CLAIM

IG COST

igle column 11 ems

Size of type 5¹/₂ point

insertions 2

Size of quad upon which type is cast 5¹/₂

organization of the securities of which the principal and income of such property as the same shall become due and payable and to give binding receipt therefor;
(3) to take such action, whether by legal proceedings, compromise, abandonment or otherwise, as the Board of Trustees, in its discretion, shall deem to be in the best interest of the Trust.
(4) To retain in, or convert to, cash or readily marketable securities without liability for interest or any other return thereon except as shall be actually realized. To lend money to the City of Fort Wayne at a reasonable rate of interest.
(5) In all other respects except as herein specifically provided this Trust Agreement shall be governed by the trust laws of the State of Indiana.
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b) Pay the reasonable and necessary expenses incurred by the Board of Trustees in administering this trust.
9. Corpus of the Trust. The corpus of the trust shall be the monies distributed according to Section 8(a) of this Trust Agreement, plus the income derived from the investment of the corpus funds. In anticipation of the amortized lease continuing in full force and effect for its entire 35 year term, it is a purpose of this trust for the corpus to be secure from invasion and distribution by the Board of Trustees while said lease continues in force. In the event that Indiana & Michigan Electric Company defaults on the lease or the lease is otherwise terminated, the Board of Trustees shall permit the corpus to be utilized by the City of Fort Wayne to reclaim the leased facility pursuant to a duly enacted ordinance of the Common Council of the City of Fort Wayne. In all other circumstances, the corpus shall remain secure from invasion and distribution by the Board of Trustees, with the following exception: that this spendthrift provision may be broken and rendered null and void by a duly passed ordinance of the Common Council of the City of Fort Wayne, Indiana, following full public debate on the question of invading the corpus. In advising examination of alternatives by the Board of Trustees, its investment advisers, the Mayor's Citizens Advisory Council or successor body, and an advisory referendum in which a majority of citizens of the City of Fort Wayne voting on this issue indicate their preference, in the event that the aforementioned lease should run for its entire 35-year term, the corpus shall be made available to the City of Fort Wayne, Indiana, to be utilized in accordance with the directions of the Mayor and Common Council of the City of Fort Wayne in effect at that time.
10. Severability. If any section of this trust agreement or part thereof is for any reason held invalid, such invalidity shall not affect the validity of the remaining portion or portions of this trust agreement, which shall remain in force and valid.
11. Payment of Expenses and Taxes. The Board of Trustees shall be reimbursed for any reasonable expenses, including reasonable accounting and reasonable counsel fees, incurred by it in the administration of the Trust. Such compensation and expenses may be paid by the City of Fort Wayne but until paid shall constitute a charge upon the corpus of the trust. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws, upon, or in respect of, the Trust or the income thereon shall be paid from income of the trust.
Read the third time full and on motion by V. Schmidt, seconded by Hinga, and duly adopted, placed on its passage. PASSED by the following vote:
Ayes: Seven: Burr, Hinga, Krus, Nuckols, V. Schmidt, Stier, Talorico.
Nays: Two: Moses, D. Schmidt.
Date: 7-27-75 Charles W. Westerman

State Board of Accounts

General Form No. 99 P (Rev. 1967)

of Fort Wayne
mental Unit)

To JOURNAL-GAZETTE

Dr.

County, Ind.

FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

after (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) number of equivalent lines

number of lines

number of lines

number of lines

total number of lines in notice

REGES

lines, 1 columns wide equals 457 equivalent lines at .288¢ per line

charge for notices containing rule or tabular work (50 per cent of above

extra proofs of publication (50 cents for each proof in excess of two)

TOTAL AMOUNT OF CLAIM

ADVERTISING COST

single column 11 ems

Size of type 5½ point

insertions 2

Size of quad upon which type is cast 5½

on and penalties of Ch. 89, Acts 1967,

foregoing account is just and correct, that the amount claimed is legally due, after allowing all just of the same has been paid.

19 75

Title

CLERK

PUBLISHER'S AFFIDAVIT

State of Indiana
Allen County } as:

Personally appeared before me, a notary public in and for said county and state, the undersigned ARVILLA DEWALD who, being duly sworn, says that she is CLERK of the

JOURNAL-GAZETTE

DAILY

newspaper of general circulation printed and published

in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2 time S, the dates of publication being as follows:

7/26 & 8/2/75

Subscribed and sworn to before me this 2nd day of August 1975

Notary Public

My commission expires October 25, 1975

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-21-75, on the 22nd day of July, 1975.

ATTEST:
I, Charles W. Westerman, (SEAL)
City Clerk, Presiding Officer
of the City of Fort Wayne, Indiana, on the 23rd day of July, 1975, at the hour of 10:00 o'clock A.M., E.S.T.

Approved and signed by me this 23rd day of July, 1975, at the hour of 11:00 o'clock A.M., E.S.T.

I, Charles W. Westerman, Mayor of the City of Fort Wayne, Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of General Ordinance No. G-21-75 passed by the Common Council on the 22nd day of July, 1975, and that said Ordinance was duly signed and approved by the Mayor on the 23rd day of July, 1975 and now remains on file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 23rd day of July, 1975.

SEAL CHARLES W. WESTERMAN
7/26/75 CITY CLERK

Common Council of Fort Wayne
(Governmental Unit)

To JOURNAL-GAZETTE Dr.

Allen County, Ind.

FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) — number of equivalent lines

Head number of lines

Body number of lines

Tail number of lines

Total number of lines in notice

455

2

457

COMPUTATION OF CHARGES

457 lines, 1 columns wide equals 457 equivalent lines at .288¢ cents per line

\$ 131.62

Additional charge for notices containing rule or tabular work (50 per cent of above amount)

Charge for extra proofs of publication (50 cents for each proof in excess of two)

2.00

TOTAL AMOUNT OF CLAIM

\$ 133.62

DATA FOR COMPUTING COST

Width of single column 11 ems

Size of type 5½ point

Number of insertions 2

Size of quad upon which type is cast 5½

Pursuant to the provision and penalties of Ch. 89, Acts 1967,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date August 2, 1975

Arvilla De Told CLERK

PUBLISHER'S AFFIDAVIT

State of Indiana }
ALLEN County } ss:

Personally appeared before me, a notary public in and for said county and state, the undersigned ARVILLA DEWALD who, being duly sworn, says that she is CLERK of the

JOURNAL-GAZETTE

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